



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SARAH BAEZ,

Plaintiff,

-against-

NEW YORK STATE OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE, DIVISION
OF DISABILITY DETERMINATIONS,

Defendant.
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08 Civ. 0907 (SHS) (DF)

ORDER

DEBRA FREEMAN, United States Magistrate Judge:

Plaintiff Sarah Baez seeks an extension of time to serve Defendant. (*See* Plaintiff's Motion for an Enlargement of Time to Effect Service under Rule 6B [sic] of the Federal Rules of Civil Procedure, dated Aug. 8, 2008 ("Pl. Motion") (Dkt. 16).) Rule 4(m) of the Federal Rules of Civil Procedure provides that, if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the Court "must dismiss the action without prejudice . . . or order that service be made within a specified time." Fed. R. Civ. P. 4(m). If, however, "good cause" is shown for the failure to serve within the prescribed time, then the Court "must extend the time for service for an appropriate period."¹ *Id.*

Plaintiff, proceeding *pro se*, commenced this action on January 25, 2008. (*See* Complaint, dated Jan. 25, 2008 (Dkt. 1).) On February 14, 2009, the case was referred to me by the Honorable Sidney H. Stein for general pretrial supervision. (Dkt. 2.) This Court advised Plaintiff by letter, dated February 15, 2008, that service of process had to be completed by

¹ Although Plaintiff seeks an extension of time to serve Defendant under Rule 6(b) of the Federal Rules of Civil Procedure, Rule 4(m) specifically relates to the time limits for service.

May 27, 2008, in accordance with Rule 4(m). (Dkt. 3.) In that letter, this Court stated: “[I]f service is not made upon the defendant by May 27, 2008, and you have not shown good cause for such failure to serve, I will recommend to Judge Stein that the action be dismissed.” (*Id.*)

Plaintiff, however, did not attempt to serve the original Complaint on Defendant, but rather indicated her intention to file an Amended Complaint. (*See* Letter to the Honorable Debra Freeman from Plaintiff, dated Mar. 11, 2008 (Dkt. 4).) On May 22, 2008, Plaintiff filed an Amended Complaint (*see* First Amended Complaint, dated May 22, 2008 (Dkt. 6)), and an Amended Summons was issued (Dkt. 5).

On May 22, 2008, the same day that she filed the Amended Complaint, Plaintiff apparently attempted to serve it upon Defendant at the New York State Attorney General’s Office, 120 Broadway, New York, New York, 10271. (*See* Pl. Motion, at 2.) On June 10, 2008, however, Defendant wrote to the Court and Plaintiff, stating that, in its view, it had not yet been properly served. (*See* Letter to the Honorable Debra Freeman from William H. Bristow III, Assistant Attorney General, dated June 10, 2008 (Dkt. 8); Affirmation of Jennifer L. Johnson in Opposition to Plaintiff’s Motion to Enlarge Time to Effect Service, dated Aug. 12, 2008 (“Johnson Affirm.”) (Dkt. 17), at ¶ 6.) On July 1, 2008, Plaintiff then attempted to serve the Amended Complaint and Amended Summons upon Defendant at Defendant’s 22 Courtlandt Street offices, where, according to Plaintiff, Defendant’s Managing Agent, James Gallagher, accepted service. (Pl. Motion, at 4-5.) Yet again, according to Defendant, this was still not adequate to effect service. (*See* Johnson Affirm., at ¶ 8.)

Plaintiff’s principal ground for requesting an extension of time is that she has acted diligently and in good faith to effect service, based on her understanding of the rules regarding

proper service. (See Pl. Motion, at 5, 6.) Indeed, Plaintiff appears to have made substantial efforts to effect service and to comply with the deadline for service of process. The Court notes that Plaintiff is proceeding in this case *pro se*, and that she may not have understood fully the rules governing service. Under the circumstances, the Court finds “good cause” for the requested extension of time for service to be completed. See Fed. R. Civ. P. 4(m).

Accordingly, it is hereby ORDERED that:

(1) the *Pro Se* Office of the Court is directed to arrange for the issuance of an Amended Summons as of this date, and

(2) Plaintiff’s time to serve Defendant shall be extended to 60 days from the issuance of the Amended Summons.

Dated: New York, New York
August 27, 2008

SO ORDERED



DEBRA FREEMAN
United States Magistrate Judge

Copies To:

Hon. Sidney H. Stein, U.S.D.J.

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